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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.      | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------|------------------|
| 10/758,378  | 01/15/2004  | Lucky Campbell       | 4204P2750                | 5438             |
| 23504   | 7590        | 02/12/2007           | EXAMINER                 |                  |
| WEISS & MOY PC<br>4204 NORTH BROWN AVENUE<br>SCOTTSDALE, AZ 85251 |             |                      | MATTER, KRISTEN CLARETTE |                  |
|   |             |                      | ART UNIT                 | PAPER NUMBER     |
|   |             |                      | 3771                     |                  |
| SHORTENED STATUTORY PERIOD OF RESPONSE                            |             | MAIL DATE            | DELIVERY MODE            |                  |
| 3 MONTHS  |             | 02/12/2007           | PAPER                    |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/758,378             | CAMPBELL, LUCKY     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Kristen C. Matter      | 3771                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 January 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 15 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Drawings***

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings are merely informal sketches with varying line thickness and illegible reference characters. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the switch within the housing, the timing device, the alarm, and the adjustable timing device must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure is objected to because of the following informalities: on page 1, line 19, "HELIOS" should be changed to --HELIOS®--; on page 2, lines 18-19 and page 3, line 9 "as between the first end..." should be changed to --to between the first end...--; on page 8, line 7, "Tubes A and B" should be changed to --Tubes A' and B'--.

Appropriate correction is required.

***Claim Objections***

Claim 1 is objected to because of the following informalities: on line 15, "third tube and said second end" should be changed to --third tube or said second end--. Appropriate correction is required.

Claim 3 is objected to because of the following informalities: on line 14, "second tube and said second end" should be changed to --second tube or said second end--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, on line 4, it is unclear which tube "said tube" is referring to as receiving oxygen under pressure because a first tube and a second tube have already both been mentioned. On lines 13-14, use of the language, "first tube, as between said first end of said third tube and said first end of said second tube" renders the claim indefinite because the wording "as between" is confusing. Also, Examiner questions how oxygen would flow between said first end of said third tube and said first end of said second tube; should "second tube" be changed to -- fourth tube--?

Regarding claim 3, on line 5, as written it is unclear whether both the first end and the second end of the second or just the second end terminates proximate a first nostril. On lines 13-14, use of the language, "as between said first end of said second tube and said first end of said third tube" renders the claim indefinite because the wording "as between" is confusing.

Regarding claim 4, on line 5, it is unclear which tube "said tube" is referring to as receiving oxygen under pressure because a first tube and a second tube have already both been mentioned.

Claims 2 and 5-8 are indefinite for the reasons outlined for claim 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shotton (US 2,007,287) in view of Coury et al. (US 7,096,865).

Regarding claim 1, Shotton discloses an apparatus for the treatment of nasal passages comprising first and second tubes (14), each with a first end and a second end, which receive pressurized air laden or not with medicament, third and fourth tubes (37) each with a first end and a second end, a switch (24) in communication with all four tubes, wherein the second end of said third tube terminates in a first nostril of a person, the second end of said fourth tube terminates proximate a second nostril of a person, and wherein said switch is position so as to alternate a flow path of air under pressure between second ends of either the third or fourth tube upon activation by a user (see column 3, lines 1-10 and Figures 1 and 3). Shotton is silent as to a source of pressurized oxygen. However, Coury et al. discloses a personal gas supply system for delivering pressurized oxygen to the nostrils of a user (see abstract and column 5, lines 40-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Shotton's device with a pressurized source of oxygen as taught by Coury et al. for providing the gas supply/medicament to the nostrils of the user. Furthermore, it is well known to one of ordinary skill in the art that positive pressure from a gas supply is an

effective means of clear congested/obstructed airways and it appears that Shotton's device would perform equally well with the pressurized oxygen supply taught by Coury et al.

Regarding claim 2, the switch disclosed by Shotton is within a housing (1, 4, 18) and the pressurized air enters the switch through the housing through openings (21). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed the oxygen source of the modified Shotton device within the housing, by the opening (21) disclosed by Shotton for delivering the gas to the user. Furthermore, it is well known in the art to place pressurized oxygen supplies in housing units for protecting the gas tank.

Regarding claim 3, Shotton discloses two single tubes (14).

Regarding claim 4, the modified device of Shotton has all of the structural limitations needed to perform the recited steps. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention, upon seeing the modified device of Shotton, to perform the recited steps of claim 4 for providing the gas to the nostrils of the user.

Regarding claims 5 and 8, Shotton discloses a timing mechanism for coupled to the switch for rotating the disk and thereby alternating the flow of gas between nostrils of the user (column 2, lines 15-35).

Regarding claim 6, Coury et al. discloses an alarm for alerting the user of a disruption in the gas supply.

Regarding claim 7, the timing device disclosed by Shotton is adjustable by the winding of the motor or drive mechanism for the shaft (23) connected by the reducing gearing.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Curti et al. (US 2006/0174886) is cited to show other examples of independent flow passages each capable of either gas delivery to the nostrils or monitoring breathing characteristics.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Matter whose telephone number is (571) 272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit 3771

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2/5/07